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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,078	02/03/2004	Toshifumi Masaki	1232-5273	4536
27123	7590	07/07/2008	EXAMINER	
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			STULTZ, JESSICA T	
			ART UNIT	PAPER NUMBER
			2873	
			NOTIFICATION DATE	DELIVERY MODE
			07/07/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/772,078	Applicant(s) MASAKI, TOSHIFUMI	
	Examiner Jessica T. Stultz	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,8,9 and 14 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims 4-5 and 8-9 drawn to an invention nonelected with traverse in the reply filed on May 8, 2007. A complete reply to this non-final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujieda US 5,889,576, herein referred to as Fujieda '576.

Regarding claim 1, Fujieda '576 discloses an ophthalmologic apparatus (Abstract) comprising: an eye examining portion unit for receiving a light beam and effecting the measurement of the eye to be examined (Column 6, line 55-Column 7, line 41, wherein a light beam from light sources "11" reaches the fundus of the eye as shown in Figures 2 and 4-5); an image pickup element for picking up the image of the front eye part of the eye to be examined (Column 6, line 55-Column 7, line 41, wherein the image pickup element comprises image forming lens "26", as shown in Figures 2 and 4-5); and a controller for determining whether an eyelid of the eye covers a pupil of the eye by comparing pupil diameter of the eye obtained from the image part of the eye with a predetermined value (Column 5, line 43-Column 6, line 54 and

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Column 7, line 49-Column 8, line 45, wherein the pupil diameter is detected and compared to a rectangular area “110”, specifically, Column 5, lines 57-61, wherein pupils of large diameter are partially covered by an upper eyelid, Figures 4-7), for detecting the positional shift between a position of the vertex of the cornea and the eye examining portion unit instead of detecting the positional shift between the center of the pupil of the eye to be examined and the eye examining portion unit in a case where the pupil diameter of the eye to be examined is larger than the predetermined value (Column 5, lines 58-61 and Column 6, lines 5-11 and 44-46, and Column 8, lines 13-40, specifically wherein when the pupil diameter is greater than the area “110”, which includes when the pupil diameter is large and the pupil is partially covered by an upper eyelid, a shift between the corneal vertex “101” and the eye examining portion is determined, Figures 4-5), for detecting the positional shift between the center of the pupil of the eye to be examined and the eye examining portion unit in a case where the controller does not determined that the eyelid of the eye covers the pupil of the eye (Column 6, lines 47-54 and Column 8, lines 3-11 and 40-45, wherein when the pupil diameter is smaller than the area “110”, and thereby an eyelid of the eye inherently does not cover the pupil, a shift between the pupil center “111” and the eye examining portion is determined, Figures 4-5), and for aligning the eye examining portion unit based on the detected positional shift (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, wherein the eye examining portion is aligned based on the positional shift).

Regarding claim 14, Fujieda ‘576 further discloses that the controller determines the pupil diameter of the eye to be examined on the basis of an edge of the pupil in a horizontal direction and an edge of an iris in the horizontal direction (Column 4, line 54-Column 6, line 54,

wherein the pupil diameter is determined to be larger or smaller than area "110" using an edge of the pupil that meets an edge of the iris in the horizontal direction, as shown in Figures 4-5).

Response to Arguments

Applicant's arguments filed April 28, 2008 have been fully considered but they are not persuasive. Specifically, applicant argues that the Fujieda et al '172 reference does not disclose a controller for determining whether an eyelid of the eye covers a pupil of the eye and detecting positional shift as claimed. However, the examiner disagrees since Fujieda et al '172 discloses an apparatus that detects the positional shift in different manners based on whether the pupil diameter is larger or smaller than area "110" (Column 5, lines 58-61 and Column 6, lines 44-54) and also whether or not an eyelid would cover at least partially the pupil (Column 5, lines 58-61) or not (Column 6, lines 50-54, wherein a pupil having a diameter less than the area "110" inherently would not be partially covered by an eyelid). Furthermore, Fujieda et al '172 discloses an apparatus for detecting the positional shift between a position of the vertex of the cornea and the eye examining portion unit instead of detecting the positional shift between the center of the pupil of the eye to be examined and the eye examining portion unit in a case where the pupil diameter of the eye to be examined is larger than the predetermined value (Column 5, lines 58-61 and Column 6, lines 5-11 and 44-46, and Column 8, lines 13-40, specifically wherein when the pupil diameter is greater than the area "110", which includes when the pupil diameter is large and the pupil is partially covered by an upper eyelid, a shift between the corneal vertex "101" and the eye examining portion is determined, Figures 4-5), for detecting the positional shift between the center of the pupil of the eye to be examined and the eye examining portion unit in a case where the controller does not determine that the eyelid of the eye covers the pupil of the

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eye (Column 6, lines 47-54 and Column 8, lines 3-11 and 40-45, wherein when the pupil diameter is smaller than the area “110”, and thereby an eyelid of the eye inherently does not cover the pupil, a shift between the pupil center “111” and the eye examining portion is determined, Figures 4-5).

Applicant also argues that Fujieda et al '172 discloses always using both the corneal vertex and pupil center to detect positional shift. The examiner disagrees that both the corneal vertex and pupil center are always used to detect positional shift, since Fujieda et al '172 discloses using only corneal vertex (Column 6, lines 5-11 and Column 8, lines 13-40) and using only the pupil center (Column 6, lines 46-54 and Column 8, lines 3-11 and 40-45).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T. Stultz whose telephone number is (571) 272-2339. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jessica T Stultz
Primary Examiner
Art Unit 2873

/Jessica T Stultz/
Primary Examiner, Art Unit 2873